IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Misc. Application No. 378 of 2006

Date of Decision: 8th June, 2006

~~A.F.R. (Approved for Reporting)~~

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Not approved for reporting

Date:- 08/06/2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 378 of 2006

1. Smt. Kavita Malhotra
   W/o Sri Deepak Malhotra

2. Deepak Malhotra
   S/o Sri Jagdish Chandra Malhotra
   Both R/o 26/5, Gali No. 14, Gandhi Colony
   Police Station Nai Mandi, Muzzaffarnagar ....Applicants

Versus

1. State of Uttaranchal
2. Chief Judicial Magistrate, Pauri Garhwal
3. Rohit Singhal
   S/o Sri Ashok Kumar Singhal
   R/o B-37, Harpal Nagar
   Police Station- Gal Shaheed
   District- Moradabad .....Respondents

Sri Sudhir Kumar, learned counsel for the applicant.
Sri Amit Bhatt, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

The petition u/s 482 Cr.P.C. has been filed to quash the impugned order dated 17.11.2005 and all the proceedings in pursuance thereto in Criminal Case No. 751 of 2005, Rohit Singhal Vs. Deepak Malhotrat and others pending before the court of learned Chief Judicial Magistrate, Pauri Garhwal.

Brief facts for the disposal of this petition are that the complainant Rohit Singhal is the younger brother of Rajat Singhal who is the Director of M/s Kamakhya Ispat & Finance Pvt. Ltd., Kotdwar, Dsitrict Pauri Garhwal and the present applicant No. 2 Deepak Malhotra was a chartered accountant of the said firm. The applicant No. 1- Smt. Kavita Malhotra is the wife of the applicant No. 2-Deepak Malhotra. The present applicants came to Moradabad on 5th April 1998 and made a request to Shri Ashok Singhal, father of the complainant-Rohit Singhal to become the Director of M/s Vaibhav Steels Pvt. Ltd., Kotdwar. Shri Ashok Singhal shown his inability to

became the Director of that company. Thereafter, on 07.05.1999 notice was received from Ashok Gupta belonging to Ghaziabad pretending himself to be the steel supplier addressed to Rohit Singhal as a Director of M/s Vaibhav Steels Pvt. Ltd., Kotdwar and he demanded the rest of the amount due towards the company. When the complainant-Rohit Singhal received the notice, he sent the reply alleging therein that he is not the Director of the said company and he had no concern to the said firm. Thereafter, he also made a public notice in the paper Hindustan Times informing to all that he is not concerned to the said firm. The complainant-Rohit Singhal was never concerned with the firm. After receiving the notice, he inquired about the said firm and he came to know that the said firm has been closed on 15.10.1998. It was revealed that on 28.10.1998, after the closure of the firm, the complainant had been shown as a Director from the date of 10.04.1998 at the behest of Manoj Rastogi. When the complainant inquired for Manoj Rastogi, he refused to made such proposal to the Registrar of Company at Kanpur and he had stated that the signature on such proposal seems to be forged one. Shri Manoj Rastogi also informed him that he had already informed the Registrar of the Company on 26.10.1998 and 03.11.1998 that there was no change in the Director of the company. Thereafter, the complainant-Rohit Singhal approached the present applicants and they stated that what they had to do, they had done it and also asked them to do whatever they like. The F.I.R. was lodged indicating the above facts. The investigation was conducted as usual and it culminated into the final report. Thereafter a protest petition was filed before the learned Magistrate and the learned Magistrate registered the said complaint and recorded the statement u/s 200 and 202 Cr.P.C. The learned Magistrate recorded the statement of the complainant-Rohit Singhal and statement of Ashok Singhal were also recorded. Thereafter, the cognizance order was passed against the present applicants u/s 420, 468, 471 I.P.C.

Feeling aggrieved by the said cognizance order, the present petition has been filed.

Heard learned counsel for the applicants and learned A.G.A. and perused the record.

It was contended on behalf of the learned counsel for the applicants that there is no averment in the F.I.R. or in the protest petition and in the evidence recorded u/s 200 and 202 Cr.P.C. to the effect that the applicants had forged any document for the purposes of obtaining or receiving any property or security fraudulently from the respondent No. 3. It was further contended that the complainant-Rohit Singhal had not stated in the complaint that the applicants ever forged any document for the purpose of obtaining or receiving any property or security fraudulently from him. It was further contended that the complaint as well as statement of the witnesses did not disclose commission of any offence by the applicants. The learned A.G.A. also could not point out from the record that there is any averment against the present applicants. Perusal of the statement reveals that the statement did not reveal that it has been forged by the applicants. Learned Magistrate had not made the effective inquiry in this matter and had not directed the complainant to adduce the entire evidence in this matter so that the real fact may be placed before the court below. The learned Magistrate while holding that there is a prima-facie had stated that there are nine papers annexed with the evidence and the evidence of u/s 200 and 202 cr.P.C. As has been indicated above, these statements di not state that the present applicants had made any forgery or they had submitted it to the Registrar of the company or they had cheated the complainant. The learned Magistrate should have made effective inquiry in this matter. The summoning is serious matter as has been held in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705** wherein it has been held as under:-

" Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support this allegations in the complainant to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is to that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

As a matter of fact, this matter requires a probe & the signature and the writings of the applicant would have been compared by the Investigating Officer. The Investigating Officer should have collected the evidence and would have inquired different persons arrive at the conclusion as to who had actually made the forgery in the said papers. The evidence of the officials of the Registrar of the company at Kanpur was also relevant. The learned Magistrate instead of registering the case as a complaint case and proceedings u/s 200 and 202 Cr.P.C. would have directed further investigation and he should have gone through the entire case diary and he would have made the point on which further investigation was required. The Magistrate had not opted this course which was available with him. It would be just and proper to quash the

cognizance order as well as the registration of the complaint in this matter. It would be just and proper to find out where the investigation lacks and what are the point to be investigated in this matter in accordance with the law provided under the Cr.P.C.

In view of the above, the cognizance order dated 17.11.2005 is liable to be set aside. The petition is allowed and the cognizance order dated 17.11.2005 passed by Chief Judicial Magistrate, Pauri in Criminal Case No. 751 of 2005 is set aside. The matter is remanded back to the learned Magistrate with the direction to dispose of the case in light of the observations made above.

The petition is disposed of accordingly.

All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

8th June, 2006
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